IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.3328 OF 2004

Air India Ltd. ...Petitioner.
Vs.
Kamgar Utkarsha Sabha and 87 Ors.
And Pankaj R. Baghudia & 17 Ors. ...Respondents.

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Mr.S. K. Talsania with Mr.Saluja i/b.M. V. Kini & Co. for the Petitioner.
Mr. Susheel Mahadeshwar for Respondent No.1.
Ms. Ranjana Todankar for Respondent Nos.2 to 9 and 11 to 19.

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CORAM : DR.D.Y.CHANDRACHUD, J.

January 11, 2005.

P.C.:

The workmen to whom this Writ Petition relates, it is undisputed, are covered by a notification dated 16th November 1999, abolishing contract labour, issued by the appropriate Government under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970. The workmen, it is common ground, have been in service and have worked for a period in excess of 15 years. These workmen are engaged at various jobs such as:

"(i) Maintenance of electrical installation and

Maintenance and operation of Generator sets.

(ii) Maintain and operation of Air Conditioning plant.

(iii) Maintenance of Fire fighting equipment and Appliances.

(iv) Maintenance and Operation of effluent plants."

2. On 8th February 2000, a Division Bench of this Court had, in Writ Petition 2991 of 1999, which related to the same group of workmen, granted interim relief in terms of prayer clause (d) which was in the following terms:

"(d) Pending hearing and final disposal of this Petition, this Hon'ble Court be pleased to direct the Respondent No.1 to pay to the Petitioners wages equal to the wages paid to similarly placed permanent employees in respondent No.1 establishment."

3. Writ Petition 2991 of 1999 was disposed of by a Division Bench on 16th December 2002, in view of the judgment of the Supreme Court in **Steel Authority of India Ltd. vs. National**

Union Water Front Workers, 2001 AIR SCW 3574, with a direction to the appropriate Government to make a reference of the following demands for adjudication to the Tribunal :

> "(i) Whether the contract between Air India and the respondent No.5 to 15 contractors, is a sham and bogus and is a camouflage to deprive the Petitioners of benefits available to permanent workmen of Air India Limited?
>
> (ii) Whether the Petitioners should be declared as permanent workers of Air India?
>
> (iii) What are the wages and consequential benefits to be paid to the Petitioners?"

The Division Bench directed that till the application for interim relief is decided by the Industrial Tribunal and for a period of four weeks thereafter, Air India would abide by the interim order granted by this Court on 8th February 2000.

4. The impugned order has been passed by the Central Government Industrial Tribunal on the question of interim relief. The Tribunal has directed that during the pendency of the reference, the Company shall continue to employ a group of 105 workmen who are covered by the reference. On this aspect of the matter, no grievance has been made by Counsel appearing on behalf of the Petitioner. However, the only submission which has been urged is in regard to the interim direction of the Tribunal in regard to the payment of wages to the workmen. The Tribunal has directed the Petitioner to pay to these workmen, the wages as were directed to be paid by the interim order dated 8th February 2000 that was passed in Writ Petition 2991 of 1999. In addition thereto, the Tribunal has directed the Petitioner to pay to the workmen revised wages from the date of passing of the award clarifying that these revised wages would be those that have been paid to the permanent workmen of the lowest category.

5. Counsel appearing on behalf of the Petitioner has submitted that on the date on which the interim relief was granted

by the Division Bench of this Court i.e. 8th February 2000, the Central Government while declining to abolish contract labour in respect of certain jobs had imposed a condition that Air India shall, however, pay the same wages that are being paid to the lowest category of regular employees in the concerned establishment. Counsel urged that this condition in the notification declining to abolish contract labour was subsequently deleted by the Government of India in the Ministry of Labour in a notification dated 16th February 2004. Hence, it is submitted that since this condition has been deleted, the Tribunal ought not to have continued the interim order dated 8th February 2000 passed by the Division Bench of this Court.

6. At this stage, the Court is seized of a challenge to an interim order. The Tribunal has, in my view, furnished cogent and adequate reasons for granting interim relief and the Court would be reluctant to disturb such an interim order, particularly when it is an order passed within jurisdiction and is based on reasons which are just and fair. These workmen have been working continuously

for a period in excess of 15 years. They had been protected on 8th February 2000 by an interim order passed by the Division Bench. Undoubtedly, while making a reference, the Division Bench in its order dated 16th December 2002 granted liberty to the workmen to apply before the Tribunal for interim relief until which period, the earlier interim order was continued. The Tribunal has in the interests of industrial peace and harmony, struck an equitable balance, which is both just and fair, by declining to interfere with the interim position in regard to the payment of wages which held the field for over four years. The interference of this Court is not warranted.

7. In so far as the notification of 16th February 2004 is concerned, it is common ground that it relates to the condition that was imposed in the notification dated 16th November 1999 in so far as it declined to abolish contract labour. In the present case, we are governed by a notification for abolition.

8. Before concluding, it would be necessary to advert to

one of the submissions which was urged before the Court which was to the effect that by operative clause (c) of the impugned directions, the Tribunal has in fact, granted interim relief in addition to what is already granted by this Court in its order dated 8th February 2000 as and by way of revised wages. On the other hand, Learned Counsel appearing on behalf of the Respondents has submitted that the directions contained in clause (c) of the interim order of the Tribunal cannot be read as being in addition to what is granted by this Court in its order dated 8th February 2000 and that the workmen would rest content if they are granted interim relief in accordance with the order of 8th February 2000 or the revised wages as are paid to the permanent workmen of the lowest category whichever is lower. In these circumstances, there shall be a clarification to the effect that in pursuance of the interim order of the Tribunal, the concerned workmen would be entitled to receive such wages as would be payable to them in pursuance of the interim order dated 8th February 2000 passed by this Court in Writ Petition 2991 of 1999 or the revised wages as are being paid to the permanent workmen of the lowest category

whichever is lower. This clarification issues with the consent of the Respondents.

9. The petition is accordingly disposed of.

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